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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,353	02/12/2001	Martin Daniels	207-001	7800

7590 08/24/2006

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EXAMINER
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ALIE, GHASSEM

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/782,353

Applicant(s)

DANIELS, MARTIN

Examiner

Ghassem Alie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bushaw, U.S. Patent 1, 850,314. Bushaw discloses the same invention as claimed including: a first support member (upright 4); a workpiece reception member (39/40/41) perpendicularly attached to the first support member (see Figures 1 and 2); a handle member (20) attached to the first support member (see Figures 1 and 2) and includes a pair of identical severing members (each cutting edge of star-knife 26 or 26 and 30).

As to claims 2 and 6, the handle of Bushaw is curved and therefore is serpentine shaped.

As to claims 3 and 8, the reception member is a telescoping member (39/41, see Figure 2).

As to claim 4, it should be noted that in apparatus claims the workpiece does not further limit the apparatus of claim 1.

3. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Mendenhall, U.S. Patent 634,304. Mendenhall discloses the same invention as claimed including: a first support member (A or B'); a workpiece reception member (L) perpendicularly attached to the first support member (directly to A or indirectly to B'); a

handle member (G and F) attached to the first support member (directly to B' or indirectly to A) and includes a pair of identical severing members (C).

As to claims 2 and 6, the handle of Mendenhall is curved and therefore is serpentine shaped.

As to claims 3 and 8, the reception member is a telescoping member (see Figure 1 where L is adjustable).

As to claim 4, it should be noted that in apparatus claims the workpiece does not further limit the apparatus of claim 1.

4. Claims 1, and 4-5 are rejected under 35 U.S.C. Maillez, U.S. Patent 4,625,607. 102(b) as being anticipated by Maillez discloses the same invention as claimed including: a first support member (7); a workpiece reception member (11) perpendicularly attached to the first support member (see Figures 1 and 2); a handle member (26) attached to the first support member (16) and includes a pair of identical severing members (18).

As to claim 4, it should be noted that in apparatus claims the workpiece does not further limit the apparatus of claim 1.

5. Claims 12 and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Bushaw, U.S. Patent 1,850,314, and Miller, U.S. Patent 396,339. Bushaw discloses the same invention as claimed including: a workpiece reception portion (39-41) having a certain shape capable of receiving and supporting a metal stud; a support member (1-4,24,31,32) having a first relatively projecting portion (1) and a second relatively thick portion (24,31,4), wherein the reception portion is mounted upon the second portion; a serpentine shaped handle (handle 20 is curved) which is pivotally coupled to the second portion', a pair of substantially

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identical severing members (each cutting edge of star cutter 26 or 26 and 30, see column 2, line 2, where it states that the cutter 30 is attached as shown in Miller) which are pivotally couple to the second portion and capable of moving from an open position to a closed position upon movement of the handle toward and away from the support member.

As claim 14, the reception portion is orthogonal to the longitudinal axis of the reception portion.

As to claim 15, the pair severing members having at least two sharp edges as shown in Figure 1.

As to the phrases directed toward the specific workpiece, for example, "... which is similar to said metal stud, effective to receive and support said metal stud", they do not further define the invention as they are directed to a specific workpiece.

6. Claims 12-13 and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Mendenhall, U.S. Patent 634,304. Mendenhall discloses the same invention as claimed including: a workpiece reception portion (A/J or L) having a certain shape capable of receiving and supporting a metal stud; a support member (A and B' or B') having a first relatively projecting portion (A or B') and a second relatively thick portion (B' or O), wherein the reception portion is mounted upon the second portion; a serpentine shaped handle (F/G) which is pivotally coupled to the second portion; a pair of substantially identical severing members (C) that are pivotally couple to the second portion and capable of moving from an open position to a closed position upon movement of the handle toward and away from the support member.

As to the phrases directed toward the specific workpiece, for example, "... which

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is similar to said metal stud, effective to receive and support said metal stud", they do not further define the invention as they are directed to a specific workpiece.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bushaw, U.S. Patent 1,850,314, and Miller, U.S. Patent 396,339. Bushaw and Miller Discloses the invention substantially as claimed except for: the pair of feet for supporting the workpiece support; however, the examiner takes Official Notice that it is old and well known in the art to use feet in conjunction with workpiece supports for the purpose of supporting a workpiece support on a uneven ground or to provide stability during a cutting operation. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use feet with the workpiece support of Bushaw and Miller in order to provide stability to the device during a cutting operation.

***Response to Amendment***

9. The affidavit under 37 CFR 1.132 filed on 06/12/06 is insufficient to overcome the rejection of claims 1-8 and 12-15 based upon 35 U.S.C. 102 (b) as being anticipated by Bushaw (1,1850,314), Mendenhall (634,304), Malillez (4,625,607) and Miller (396,339) as set forth in the last Office action because: it refer(s) only to the system described in the above referenced application and not to the individual claims of the application. Thus, there

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is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716. It should be noted that the affidavit defines the particular metal stud that has been described in the specification. However, the claims broadly recite “a stud” and “a stud reception member.” Claims do not recite the specific structure of the stud and the stud reception member.

Applicant’s argument that the cited prior art does not disclose a stud or a stud reception member is not persuasive. It should be noted that during examination, the claims must be interpreted as broadly as their terms reasonably allow. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In this case, i.e., a stud for a in a dollhouse can be considered as a stud that can be cut with any of cutting tools in the above cited references. In the cutting apparatus in the references above, the place or the support member that the workpiece or the stud is placed during cutting is considered to be a “stud resection member.” It should be noted that the structure of the stud reception member has not been claimed. In addition, each workpiece in the above references has a shape similar to the metal stud and is placed on a support that has a shape similar to the shape of the workpiece. It is certain that if the cutting apparatus in the references is build larger, it would be able to cut a metal stud as well. In other words, the cutting apparatus in the above references are capable of cutting a small metal studs or a large metal studs if they are build larger. Furthermore, all the references cited blow read on claim 1, since claim 1 is very broadly claims the instant invention.

*Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Halverson et al. (3,393,595), Worsham (4,401,002), Matthews (4,130,037), Nebel (2,355,320), Herlihy (5,934,166), Hall et al. (3,714,856), Vertunni et al. (1.122.558), and Fasse teach a metal stud cutter.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'B. Ashley', with a stylized flourish at the end.

**BOYER D. ASHLEY  
SUPERVISORY PATENT EXAMINER**

GA/ga

August 17, 2006